

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN MCBREARTY;
CARL MCBREARTY; and
NINA MCBREARTY

v.

CIVIL ACTION NO. 02-4553

DELAWARE COUNTY SHERIFFS
DEPARTMENT; NORWOOD BOROUGH
POLICE DEPARTMENT; DELAWARE
COUNTY; and MEDIA BOROUGH

O R D E R

AND NOW, this _____ day of _____, 2004, upon consideration of the Plaintiffs' Petition for a Time Extension to File an Appeal, and the Defendants' Reply thereto, it is hereby **ORDERED** and **DECREED** that the Plaintiffs' Petition is **DENIED**, with prejudice.

BY THE COURT:

Hon. Legrome D. Davis, U.S.D.J.

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**DEFENDANT, NORWOOD BOROUGH POLICE DEPARTMENT'S,
REPLY TO THE PLAINTIFFS' PETITION FOR A
TIME EXTENSION TO FILE AN APPEAL**

Defendant, Norwood Borough Police Department, by and through its counsel, Margolis Edelstein, hereby responds to the Plaintiffs' Petition for a Time Extension to File an Appeal, as follows.

Plaintiffs seek leave for an extension of time to file an appeal of this Court's Order of February 23, 2004 granting summary judgment in favor of the Defendants and effectively terminating the case. Such an appeal is governed by F.R.A.P. 4[Appeal as of Right - When Taken], which states, in pertinent part. "[i]n a civil case . . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered". The Rule mentions not *service*, but rather *entry*, of the Order. The time period from which an appeal could have been taken began to run on February 23, 2004 and expired on March 24, 2004. Respectfully, pursuant to the Rules of Appellate Procedure, the District Court no longer has jurisdiction to hear the Plaintiffs' Petition.

Plaintiff, John McBrearty alleges in his Petition that he was never notified of this Court's February 23, 2004 Order, and that he only learned of the termination of the case when he called the Clerk's office on May 5, 2004. The Defendant finds this assertion to be highly suspect. The Plaintiffs' Petition indicates that John and Carl McBrearty's address remains 928 Delview Drive, Folcroft, PA 19032, which is the address of record on the Court's docket [and has been since the inception of the case]. The Court's docket indicates that a copy of the February 23, 2004 Memorandum and Order was served upon all parties and/or counsel on that date, and, as prior Orders of this Court had been sent to the Plaintiffs at their respective addresses of record and all apparently received in a timely manner without issue. Accordingly, the Plaintiffs current assertion that they did not receive this Court's February 23, 2004 Memorandum and Order strains credulity.

Furthermore, a review of the facts and the law as set forth in the Memorandum and Order confirm that there are no meritorious appealable issues in this matter. This Court quite correctly determined that the Plaintiffs do not have a cause of action against the Defendants for violation of their rights under the First Amendment; and that, with respect to the Plaintiff's remaining claims, the Defendants were entitled to the defense of qualified immunity. The Plaintiffs' instant Petition must be seen for what it is, another attempt by John McBrearty to circumvent and/or delay the lawful Orders and decisions of the Court of Common Pleas of Delaware County.

In conclusion, the Defendant, Norwood Borough Police Department, respectfully moves this Honorable Court to deny / dismiss the Plaintiffs' Petition for a Time Extension to File an Appeal, as there are no appealable issues and past experience reveals that it is more likely than not that the Clerk of the Court *did* provide to Plaintiffs a copy of this Honorable Court's February 23, 2004

Memorandum and Order; and, accordingly, the time for the Plaintiffs to file an appeal from this Court's Order has long passed.

Respectfully submitted,

MARGOLIS EDELSTEIN

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to the Plaintiffs' Petition for a Time Extension to File an Appeal has been served this 25TH day of May, 2004, by first-class United States mail, postage pre-paid, addressed as follows:

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